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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/785,581

Filing Date: February 23, 2004

Appellant(s): MCALPINE, JAMES KENNETH

Derek H. Maughan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/10/06 appealing from the Office action mailed 4/15/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,749,609 to Steele.

As to independent claims 1,14 and 15 The Steele device discloses in fig. 4 flexible piping 10 having first 11 and second 12 ends connected to a first pipe section 50 and a second pipe section 51, respectively. The flexible piping 10 includes a smooth bore fig. 4, column 1, lines 15-20, column 4, lines 25-'30 and column 4, lines 40-45) so that flow of all materials passes unimpeded. It is noted that the Steele device is not stated to be used as a connection for between a bath drain and a bath overflow however such recitation is considered to be merely a matter of intended use in which the introductory phrase or preamble of the claim does not state a limitation in the claim which distinguishes it over the prior art and further it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

As to claim 2, the two rigid flanking members can either be considered as the members 13a and 14a or the flange members 50 and 51 shown in fig. 4.

As to claims 3-5, the connector is inherently prevented from curvature above a selected angle based on many factors such as length of the flexible member, material of the flexible

member, thickness of the flexible member, width of beads 16b or grooves 15a of which beads 16b will contact each other during bending and prevent further curvature. As shown in fig. 4 the connector bends within the range prescribed in claim 4 and clearly could be bent less or more such that members 50 and 51 interfere such as stated in claim 5 all depending on construction factors noted above all of which appear inherent in the fabrication of the flexible connector and as such do not patentably define over the prior art.

As to claims 6 and 13, see column 3, lines 35-45 which indicate the flexible member is made of elastomeric material.

As to claims 7-12 see the depressions, weak areas or predefined flexion locations 15a and beads or ridges 16b in fig. 1.

(10) Response to Argument

The Examiner submits that, for the following reasons, pending claims 1-13 and 15 are anticipated by Patent 5,749,609 to Steele; and consequently are not patentable. The Examiner will address each of Appellant's arguments in the same order and format in which they were presented in the Argument section of the Appeal Brief, and are as follows:

A. Claims 1-13 and 15 are anticipated by Steele.

1. The Examiner maintains that the Steele reference discloses all of the features that are set forth in the claims of the current application.
2. The Examiner agrees that claims 2-13 all depend from claim 1 and that claim 1 includes the requirement that the device include a rib within the inner portion of the device. The Examiner also agrees that claim 15 includes the requirement that the device include a rib and also requires that an annular depression exist along the outer surface of the connection device, and that the positioning of this outer surface depression correspond with the positioning of this

rib. It is the Examiner's position that Patent 5,749, 609 to Steele, (hereafter referred to as Steele) discloses both of these limitations, as will be explained in further detail below.

3. The Examiner agrees that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently in a single prior art reference. Again, it is the Examiner's position that Steele discloses every structural limitation recited in the present application, as will be set forth in further detail below.

4. Examiner agrees that claim of the application in it's current form includes the limitation that the flexible piping connector has a first end and a second end, a tubular flexible member with a substantially smooth inner bore surface and at least one rib on a portion of an internal surface.

5. The Examiner's takes notice that the comments related to this amendment clarify that the item being claimed as the rib is the item designated as number 16 in Fig. 4 of the application as filed.

6. The Examiner does maintain that the raised portion 16a extending axially between bands 13a and 14a of the structure in Steele constitutes a rib as it has been claimed by the Appellant.

7. The Examiner disagrees with Appellant's assertion that the Examiner has ignored the common meaning of the word rib. The Examiner maintains that the structure 16a fits the plain meaning of the "rib".

8. The Examiner takes notice of the definition of the word "rib" supplied by the Appellant in paragraph 8 of the argument section and the Examiner believes that the rib 16a of Steele falls under the plain meaning of the word.

After reading through the various definitions supplied by the Appellant, it appears that definition 2 or 3 would be the most applicable to the present application as definition 1 refers to a rib bone found in most vertebrates.

Definition 2 defines rib as something resembling a rib in shape or function, i.e. a traverse member of the frame of a ship that runs keel to deck. The rib 16a of Steele falls under definition 2 of a rib. In regard to definition 2, the rib 16a runs transverse to the axial or longitudinal direction of the sleeve 10 and also runs along the circumferential inner surface of the sleeve, similar to a ship's rib running along the interior circumference of the hull. Additionally rib 16a acts to stiffen the sleeve surface 16 by providing more material along the length of 16 where 16a is located.

Definition 3 defines rib as "an elongated ridge". The rib 16a of Steele falls under this definition as well, as 16a is an elongated ridge protruding from the surface of 16 on which bands 13a and 14a rest. The ridge or rib 16a is created by the stepped surfaces 20, 22 of 16 on either end of sleeve 10 leading up to surface 16a in the center. The stepped surfaces 20, 22 (best seen in fig. 3 of Steele) create the ridge 16a, which is elongated as it runs from one stepped surface 20 to the other 22.

Therefore Steele anticipates the recitation "rib", as claimed by the Applicant, because the rib 16a of Steele satisfies 2 of the 3 definitions of the word "rib".

9. The Examiner does not agree with the Appellant that implicit with this definition is the meaning that a rib is a portion of an entire body or device which is proportionally smaller or more narrow than the body of the entire piece. However, if these "implicit" meanings were to be read into the definition of the word rib, Steele would still anticipate the "implicit" definition.

The rib 16a of Steele is a portion of an entire body 10 which is proportionally smaller or more narrow than the body 10 of the entire piece. Sleeve or body 10 runs from surface 11 to surface 12. Rib 16a runs from stepped surface 20 to stepped surface 22, which is an axially shorter length than the axially length between surfaces 11 and 12, thereby making the rib 16a proportionally shorter or more narrow than the entire sleeve 10. Therefore the rib 16a of Steele comports to the common meaning of the word “rib”.

The Examiner also wishes to point out that the Appellant, on page 2, col. 1, lines 50-60 of the present invention, describes the internal surface of the connector 12 as including “a rib or protrusion 16”. Equating the two words gives the impression that a “rib” and a “protrusion” are seen, by the Appellant, as being identical and that the “rib” has no special meaning in the present application. Steele discloses “a rib or protrusion” 16a, and thus anticipates claim 1.

10. The Examiner disagrees with the Appellant’s assertion that interpreting the internal protrusion as being a rib is wholly inconsistent with the use of the word rib in common language. As proven in detail above, specifically paragraphs 8 and 9, it can be seen that interpreting 16a as a rib is wholly consistent with the use of the word rib in common language.

11. The Steele patent discloses a device 10 with an internal rib 16a within the inner surface of the device for the reasons stated above.

12. Steele discloses an internal rib 16a that is proportionally smaller than the whole body 10, which extends from surface 11 to surface 12. Therefore, Steele teaches every feature of the present invention and anticipates the present invention as set forth in claim 1 and its associated dependent claims.

B. Claim 15 is anticipated by Steele.

13. In regard to claim 15, Steele again discloses the internal rib 16a as explained above, and Steele also discloses an annular depression 25 in the outer surface, which corresponds to the location of the ridge 16a located within the inner surface of the device.

14. The Steele reference teaches supplying the internal rib 16a at each point along the sleeve 10 where an annular depression 25 is located in the outer surface of the sleeve (see fig. 1 and fig. 3). Appellant argues that the depressions in the outer surface do not each individually correspond to a projection in the inner surface as to align along the same axis, as the claim requires. However, this is not what is being claimed in claim 15. Claim 15 requires “the annular depression and the annular rib being at the same axial location”. Steele discloses this structural limitation. Looking again at figures 3 and 1, if one were to draw a vertical line through the center of depression 25 the line would intersect a point on the internal rib 16a. That vertical line would demonstrate that the annular depression 25 and the annular rib 16a are at the same axial location along the length of the sleeve 10. This same vertical line could be drawn in any of the other depressions 25 shown in fig. 1 to align with a point on the internal rib 16a that is at the same axial location as that specific depression.

Because the Steele reference discloses an internal rib 16a being at the same axial location as an exterior annular depression 25, Steele anticipates the present invention.

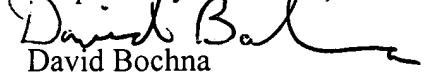
15. If view of the above comments and arguments it is believed that the prior art rejection in view of Steele should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


David Bochna

Conferees:

Daniel P. Stodola 

Aaron Dunwoody 